



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE ROOM 411  
BOSTON MASSACHUSETTS 02108

MICHAEL J. SULLIVAN  
DIRECTOR

TEL: (617) 727-8352  
(800) 462-OCPF  
FAX: (617) 727-6549

October 30, 1997  
AO-97-21

Alan J. McDonald, Esq.  
McDonald & Associates  
One Gateway Center - Suite 401 West  
Newton, MA 02158-2806

Re: Massachusetts Nurses Association

Dear Mr. McDonald:

This letter is in response to your October 7, 1997 request for an advisory opinion.

You have stated that the Massachusetts Nurses Association (MNA) is a non-profit corporation which serves as a labor organization for registered nurses (RNs) and other health care professionals. MNA's membership includes RNs who are not employed within a collective bargaining unit represented by MNA, as well as RNs and other health care professionals who are members in whole or in part because they are employed within a collective bargaining unit represented by MNA.

MNA also maintains a political action committee, ("NursePLAN"). NursePLAN is a separate and distinct entity which is independently operated and retains its funds in a separate segregated account.

MNA (as distinguished from NursePLAN) would like to contribute, from its general treasury, up to \$15,000 (which is less than 10% of MNA's gross annual revenues) to NursePLAN and other political committees and candidates. Funds in the general treasury include dues collected as a condition of employment for some of MNA's membership and as a condition of the privileges of membership in MNA.

NursePLAN will record the receipt of contributions from MNA as such. Contributions received by NursePLAN from individual MNA members will be recorded as contributions from those members, and not as MNA contributions.

**Question**

You have asked if the MNA may make the contributions as described above.

**Answer**

Yes.

## Discussion

A non-profit corporation may make political contributions to candidates, candidate committees, PACs and party committees **only if** the general treasury of the organization contains no funds derived from business and professional corporations. See M.G.L. c. 55, s. 8, c. 156A, s. 4(a), AO-95-24, and AO-91-31. We assume, therefore, that MNA's general treasury contains no such funds.

This office has issued guidelines regarding campaign finance activity by non-profit corporations such as MNA. See OCPF interpretive bulletin IB-88-01 (a copy of which is enclosed). Although MNA may make contributions to the NursePLAN PAC, it may not solicit or receive funds for that purpose or any other political purpose without being considered a political committee. As noted in IB-88-01, however, a non-profit corporation **which does not solicit or receive funds for political purposes** is not subject to the limitations and reporting requirements of the campaign finance law unless its political contributions<sup>1</sup> are "**more than incidental**" when compared to its gross revenues.

Political contributions to candidates, political action committees, and political parties<sup>2</sup> by a non-profit corporation are "more than incidental" if such contributions, combined with any other political expenditures, (1) are for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political action committee or political party and (2) exceed, in the aggregate, in a calendar year, **either \$15,000 or 10 percent of such organization's gross revenues for the previous calendar year, whichever is less.**<sup>3</sup>

Again, it is critical to emphasize that any funds **solicited or received** by MNA from MNA members or others specifically for election related purposes would make MNA a political action committee. MNA may not, therefore, **solicit or receive** funds through its general fund to be used for election related purposes unless it first organizes as a political action committee.

Given the facts stated in your letter, MNA may make the contributions described because they would not exceed the incidental threshold described above. The recipient candidates and committees

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<sup>1</sup> In light of your question, this opinion primarily concerns the application of chapter 55 to political "contributions," i.e. the giving of money or other things of value to a candidate or political action committee. As discussed in IB-88-01, however, the incidental threshold analysis also applies to political "expenditures." An example of an expenditure would be the purchase of a radio, TV or newspaper advertisement promoting certain candidates made without consultation or communication with those candidates.

<sup>2</sup> You have not asked for guidance regarding the making of contributions to support or oppose a ballot question. Please note, however, that if an organization wishes to raise funds to influence a ballot question, it must first organize a ballot question committee to undertake that activity. In contrast, if an organization makes contributions (but does not raise funds) for that purpose, it would not have to organize a ballot question committee, but would have to disclose such activity. See IB-88-01.

<sup>3</sup> Contributions made to influence a ballot question, although they would have to be reported, are not included in determining whether the "incidental threshold" has been reached. See M.G.L. c. 55, s. 1 and IB-88-01.

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must disclose contributions received from MNA. Finally, in addition to dues or other payments made to MNA by its members, MNA members may also make personal contributions to the NursePLAN PAC. Such personal contributions would not be considered in calculating whether MNA has reached the incidental threshold outlined in IB-88-01.<sup>4</sup>

This opinion is solely within the context of the campaign finance law and is provided on the basis of representations in your letter. Because making political contributions may raise questions affecting your status as a non-profit corporation, we suggest that you consult with private counsel or the Internal Revenue Service if you have not already done so.

Please contact us if you have further questions regarding the campaign finance law.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Sullivan", written in a cursive style.

Michael J. Sullivan  
Director

MJS/cp  
Enclosure (IB-88-01)

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<sup>4</sup> Please note that MNA members may not be required to contribute (directly or indirectly through MNA) to the PAC as a condition of employment. See M.G.L. c. 55, s. 16B, which states that "[n]o person employed for compensation shall be under any obligation to contribute to any candidate or political committee, or to render any political service on account of, or as a consequence of, his employment, and such person shall not be removed or otherwise prejudiced for refusing to do so . . ."